PATENT APPLICATION
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Express MAIL: ET791106935US

In re Application of:	)	
	)	
WILLIAM COLIN BASFORD	)	Patent Examiner:
	)	Patel, Kiran B.
Filing Date: 06/08/2001	)	ART UNIT: 3612
	)	
Serial No.: 09/877,585	)	
	)	
For:	)	
AERODYNAMIC COMBINATION FOR	)	March 5, 2005
IMPROVED BASE DRAG REDUCTION	)	Hallowell, Me 04347
(As Amended)	)	
----------	)	

ATTENTION: DEREK L. WOODS, ESQ.
PETITIONS ATTORNEY

REQUEST, UNDER 37 CFR Sec. 1.137(a) or 1.137(b), FOR RECONSIDERATION OF DECISION ON PETITION

Honorable Commissioner of
Patents and Trademarks
P.O. Box 1450
Alexandria, VA 22313 - 1450

Dear Sir:

INTRODUCTION

This is a Request for reconsideration of a Petition under 37 CFR 1.137 to revive an abandoned Application identified above. This request paper is being filed following a discussion with Mr. Woods on January, 13, 2005. Concurrently herewith is also filed a new Supplemental Notice of Appeal, a Check for $250.00 and a duplicate copy of a Brief on Appeal as earlier filed in triplicate on January 26, 2004.

Applicant hereby states that the entire delay was either "unavoidable" or "unintentional". Applicant's Attorney admits that he made an unintentional mistake by not including a request for an extension and the appropriate fee for the extension of time. Both Applicant and Applicant's Attorney have been diligently trying to comply with the applicable Statutes and Rules for diligent prosecution of this application which describes, depicts and claims a valuable invention. Every step in this prosecution, at least from Applicant's standpoint, has been seeking to get the Basford application allowed and issued as a patent.

BACKGROUND

On January 7, 2005 the Office of Petitions, by Attorney Woods, dismissed Applicant's earlier-filed Petition to Nullify an improper Notice of Abandonment or alternatively to Revive under Sections 1.137 (a) or (b). The Petition is dated April 6, 2004. (The Woods dismissal was not a final agency action within the meaning of 5 U.S.C. §704.). This present Reconsideration action is being taken to exhaust Applicant's Administrative Remedies and to again seek Revival of Applicant's patent application.

Attorney Woods and Attorney Jones also discussed other limited options, and disregarded same. One option was a Petition for Continued Examination. This option was rejected because it puts Applicant back again before Examiner Patel who does not distinguish between "boattails" and "boattail plates". Continued examination would thus be fruitless because Examiner Patel is not familiar with the area of technology to which the invention pertains. (While the invention will most likely be applied to land vehicles, such as long haul trucks, the invention itself is in the technical field of aerodynamics and aerodynamic drag.) Mr. Patel has repeatedly shown that he is not qualified to examine aerodynamic technology.

Applicant, in this Reconsideration Request, hereby incorporates at this point the entire April 6, 2004 Petition and its accompanying exhibits including the Declaration by the undersigned as though it were set forth in full at this point.

This present Request for Reconsideration is primarily based under 37 CFR 1.137(b) to revive an unintentionally abandoned application. By the signature hereto Applicant, by his Attorney, states that, at all times, the intention of prosecution has been timely, proper and directed toward an early allowance.

At no time has any Applicant action been taken other than to materially advance the prosecution and to seek a valuable patent for Applicant. Nothing done herewith has been for purposes of delay.

GROUNDS FOR RECONSIDERATION

The Record will reflect that the PTO in this very case: has (1) delayed entry of crucial documents for almost seven months; (2) repeatedly mailed documents to the wrong person and/or location; (3) lost, or deliberately destroyed, valuable papers, (4) misquoted the date and sequence of events leading to the so-called "abandonment"; (5) instigated incomplete and/or ambiguous entries in PAIR to the detriment of the inventor; (6) took inconsistent positions with different personnel; and (7) generally made a mess of the prosecution history of this case.

Applicant has totally lost faith in the PTO. Indeed, Applicant has become so concerned that he has turned for help from his elected Representative to Congress - the Honorable Tom Allen for the State of Maine. The inventor's contact with Representative Allen has introduced into this matter a third PTO contact. Namely one Mr. Katopis (See his letter, dated October 15, 2004, of Attachment A hereto.) Mr. Katopis has set forth one theory and date sequence for the "abandonment". Other PTO representatives have expressed other theories as explained below.

Simply stated, the Katopis position does not track with the theory or date sequences of either Attorney Woods, or Robert Oberleitner (Director of Patent Technology, Center 3600). Three different PTO people - three different date sequences, and three different theories. How can an Applicant hope to meet the PTO expectations of exactness, when the PTO itself is all over the place, and is repeatedly inconsistent depending upon which PTO document one considers?

For example, Mr. Katopis writes in paragraph 2, lines 6 and 7 of Attachment A that an Advisory Action was mailed to Applicant's Attorney on August 26, 2003. Not so. The August 26 Action was incorrectly mailed to the wrong person and to the wrong location. Mr. Katopis also concludes at the second paragraph of page 1 of his letter that Applicant's Notice of Appeal was dated December 10, 2003. Not true. That December 10 date is a fictitious date that is not, as far as this case is concerned, related to any of the relevant dates known to Applicant or his Attorney.

More recently Mr. Robert Oberleitner, mailed on November 8, 2004 a Decision on Petition to the Commissioner for Reconsideration of Final Rejection dated November 25, 2003. The Oberleitner paper ruled that Applicant's Petition was "moot". The Oberleitner, letter includes many mistakes and confusing wording. For example, it mistakenly identifies Applicant's filing date by over a year and one-half. Additionally, it acknowledges that an extension period should have been given but no such extension was ever provided to Applicant. The Oberleitner letter states that an "**extension period (unspecified) should have been given in the Advisory action.**"

Apparently, Mr. Oberleitner is referring to the PTO failure to supply a specific extension date. Since Examiner Patel was then using Patent Office Form PTOL-303 (Rev. 04-01) we must assume that Director Oberleitner meant that PERIOD FOR REPLY box (b) rather than box (a) should have been checked by

Examiner Patel or his Supervisor Mr. Glen Dayoan. If box (b) was truly meant, then Applicant's period for reply would expire on the six month statutory date calculated from the date set forth in the final rejection, ie. not later than November 27, 2003. Based upon this interpretation, Applicant's Notice of Appeal and fee served by mail deposit dated November 25, 2003 were both timely and legally effective.

Curiously, however, Director Oberleitner neglects to note that the Patel Final Rejection was also mailed to the wrong person and to the wrong location. It should have been directed to Attorney Jones not inventor Basford. Moreover, it went to Basford's old New Market, New Hampshire address not Attorney Jones nor Applicant Basford's Maine addresses. Thus, arguably, no valid date for the final rejection has ever been set. Simply stated, if Mr. Oberleitner chooses only to rely on correctly addressed documents, then Applicant should be entitled to disregard the improperly mailed Final Rejection as though it never happened.

The Oberleitner paper further states that Applicant's Notice of Appeal was untimely since it was not accompanied by a request for an Extension of time and extension fee. Applicant's Attorney by telephone with Attorney Woods on January 13 offered to correct that omission by belatedly filing both such "extension" documents. (That same offer is now repeated again herein.) But, Attorney Woods, after refreshing himself in this matter, suggested instead that a new updated Supplemental Notice of Appeal should be filed together with the appropriate fee. That suggested Action is being taken in this document.

Additionally, the Oberleitner paper says that Applicant's November 25, 2003 Petition to Reconsider was "moot" since the Basford Application was abandoned as of the Advisory Action mailing date of October 17, 2003. Attorney Woods, on the other hand, in footnote 1 on Page 2 of his Decision says that the Basford Application became abandoned (on August 28, 2003) for failure to timely

and properly reply to the final Office action mailed on May 27, 2004. (Please note that this date should have read 2003.)

In addition, careful reading of the Oberleitner letter has revealed other disturbing issues. The Oberleitner letter gave two different reasons for dismissing the Petition to Reconsider. The first reason was because the application was already ostensibly abandoned. The second reason was, because the Petition was submitted over two months after the Final Rejection was mailed. However, Applicant's Attorney had repeatedly discussed the case by telephone with Examiner Patel's supervisor, Mr. Glenn Dayoan. Those telephone discussions ended with Mr. Dayoan encouraging Applicant's Attorney to submit the Petition to Reconsider. Mr. Dayoan is a supervisory patent examiner who routinely deals with these issues. Applicant's Attorney then complied with Mr. Dayoan's suggestion.

In hindsight, one could easily assume that Mr. Dayoan deliberately mislead Applicant's Attorney, knowing full well that the Petition to Reconsider was already - according to Oberleitner - too late. What Mr. Dayoan was suggesting then was a complete waste of time and resources. To date, Mr. Dayoan has not apologized for misleading Applicant's Attorney. And, in fact, he has yet to acknowledge his mistake, if indeed his suggestion was a mistake.

Furthermore, if the Petition to Reconsider was already four months late when first submitted on Nov. 25, 2003, and six months late when a replacement copy was resubmitted by fax in Feb. 2004, why did it take another eight months for PTO personnel in TC3600 to mail their decision on that Petition to Reconsider? Reviewing the automated records of the PTO on PAIR reveals many timely filed documents simply do not appear therein. Moreover, what does appear in that record has many date-of-receipt stamps crossed out with different incorrect dates entered on the automated record. One is left with the uneasy

feeling that the "paperless" automated system is hopelessly inadequate and is causing more confusion than assistance.

Applicant and Attorney Jones respectfully submit that they could care less what "abandonment" date is actually and finally selected by the PTO in this matter. What is sincerely requested is that this case be revived and placed before the Appeal Board. Such action before a new body of Officials will allow a fresh, comprehensive and authoritative review of the record. The requested Action will hopefully lead to an immediate allowance of this Application.

In view of the showing herein, we request that this Request for Reconsideration be acted upon favorably. Such action will let us get on with the patenting process. If further questions arise, Mr. Woods is invited to contact the undersigned at the telephone number supplied below.

Respectfully Submitted,

Stanley R. Jones
Registration No.: 22, 659
49 Middle Street
Hallowell, Maine 04347
Tel. (207) 621 - 0477

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: COMMISSIONER OF PATENTS AND TRADEMARKS, P.O. Box 1450, Alexandria, VA 22313 - 1450, ON: March 5, 2005 (DATE OF DEPOSIT)

BY: (REGISTERED REPRESENTATIVE).

OCT 18 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

The Honorable Tom Allen
U.S. House of Representatives
234 Oxford Street
Portland, ME 04101

OCT 15 2004

Attention: Jacob P. Ossoff

Dear Representative Allen :

Thank you for the inquiry from a member of your staff on behalf of William C. Basford regarding the status of patent application serial number 09/877,585. We appreciate hearing from you.

A review of the prosecution history of this case reveals that patent application serial number 09/877,585 is abandoned. Specifically, the automated records of the United States Patent and Trademark Office (USPTO) show that in an Office action that was mailed to the applicant's attorney on May 27, 2003, the claims in the application were finally rejected as being unpatentable under the patent laws, title 35 of the United States Code. On July 30, 2003, the applicant's attorney filed an amendment, and Advisory Actions were mailed to the applicant's attorney on August 26, 2003, and October 17, 2003, respectively. On December 10, 2003, a Notice of Appeal was filed, but it was not timely, and subsequently, the application became abandoned by operation of law due to failure to respond to the final rejection Office action in accordance with the requirements of the patent statute and regulations. Accordingly, a Notice of Abandonment was mailed to the applicant's attorney on March 22, 2004.

Prosecution of an abandoned application remains closed, absent the filing of a grantable petition by the applicant. In this case, the automated records of the USPTO indicate that a petition to revive the application was filed by the applicant's attorney on April 6, 2004. Rest assured that the petition will be given full and careful consideration, and once a decision on the petition has been rendered, a copy of the decision explaining the findings of the Office will be mailed to the applicant's attorney. Should Mr. Basford's attorney have any further questions or concerns regarding this case, he should contact Mr. D. Glenn Dayoan, the Supervisory Primary Examiner in Group Art Unit 3612, who may be reached by telephone at 703 - 308-3102.

It would be inappropriate to comment on the merits of any particular application. We can comment, however, that the USPTO examines each patent application on its merits to determine if the statutory requirements for patentability are met, and all patent applications submitted to the USPTO undergo the same examination process based on the statutory guidelines of the patent laws. Patent applications are examined by an examiner who is familiar with the area of

technology to which an invention pertains. During the examination process, the examiner applies the laws established for patents by Congress (35 U.S.C. §§ 101, 102, 103, 112) to determine if the claims presented in an application are patentable.

We can also comment that patent applications are examined by an examiner who is familiar with the area of technology to which an invention pertains. Part of our examiners' responsibility is to ensure that claims which would otherwise be in the public domain are not allowed, and only claims that meet the statutory criteria are allowed. This means that our examiners have responsibility for making a determination as to whether any claim in an application meets all of the statutory and Office requirements. Such a determination is not an arbitrary decision on the part of the examiner, rather it is the result of a considered judgment required by the patent laws.

Regrettably, some applicants may believe that the determination of an examiner is arbitrary or incorrect, when, in fact, the examiner is merely applying the appropriate legal criteria. Although the patent system may not be flawless, the patent laws and our Office procedures have been established to protect both patent applicants and the public. Moreover, the patent laws and regulations require that patents not be granted lightly, and the public interest responsibilities of the USPTO demand that we exercise great care not to issue patents improperly. While this responsibility of the USPTO may sometimes give rise to complaints, it is a necessary part of our duty to issue patents only on inventions that satisfy the legal requirements for patentability.

The Patent Rules of Practice, 37 CFR Part 1, prohibit double correspondence with applicants and their designated legal representatives. Thus, once a registered patent attorney or agent has been designated to prosecute an application, the USPTO suggests that the designated legal representative be consulted regarding any questions or concerns the applicant may have about the application.

We trust the foregoing will be useful in responding to your constituent.

Sincerely,

Chris J. Katopis
Director of Congressional Relations

9. Apparent failure of Danielle Jones on February 10, 2004 to acknowledge the missing documents of the case file, or to bring the missing documents to Supervisory authorities within the PTO.

10. Failure of Danielle Jones or her supervisors to grant an extension of time, and/or request such an extension document or fee for same when advised by Applicant on February 10, 2004 that both a Notice of Appeal (Dated November 25, 2003) and an Appeal Brief (Dated January 26, 2004) had already been filed. Exhibit A hereto is a copy of a returned post card indicating that the Brief on Appeal and Appendix on Appeal in triplicate was received in the PTO on January 26, 2004

11. Inconsistent positions taken by the PTO pertaining to document dates and theories regarding the case prosecution history as noted in written PTO documents received by Applicant.

12. Failure of Examiner Patel to file a responding Brief to Applicant's timely filed Brief on Appeal.

13. Failure of the PTO to list Applicant's Brief on Appeal and Appendix filed in triplicate on the PAIR system.

14. Failure by PTO to grant allowance of the Basford application due to the Examiner's failure to file a responding Brief on Appeal.

A fee check in the amount of $250.00 is included herewith.

Respectfully Submitted,

Stanley R. Jones
(207) 621 - 0477
REG. NO. 22,659

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS POST OFFICE EXPRESS MAIL IN AN ENVELOPE ADDRESSED TO: COMMISSIONER FOR PATENTS, P.O. BOX 1450, P.O. Express MAIL: ET791106935US ALEXANDRIA, VA 22313 - 1450 ON: March 5, 2005 (DEPOSIT DATE)

BY: _____ (REG. REP. REG. NO. 22,659.)

ENCLOSED RE: APPEAL BASFORD

EXPRESS MAIL ET791107051US

(1) IN TRIPLICATE BRIEF ON APPEAL

(2) " " APPENDIX TO BRIEF

(3) CHECK FOR FILING BRIEF $165.00

(4) EXPRESS MAIL CERTIFICATE